IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 12653 of 2007(F)

OS.184/1979 of PRL.SUB COURT,IRINJALAKUDA
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PETITIONER:

K.A.THOMAS, S/O.ANTONY, MUKUNDAPURAM TALUK, PARIYARAM VILLAGE, KUTTICKADU DESOM, KUTTIKAD P.O, VIA CHALAKKUDY, TRICHUR DISTRICT.

BY ADV. SRI.V.GIRI
SRI.ABRAHAM GEORGE JACOB
SRI.MANURAJ. K.J

RESPONDENTS:

CHAKKU, S/O.ANTHONY, PARIYARAM VILLAGE, MUKUNDAPURAM TALUK, PARIYARAM VILLAGE, KUTTICKADU DESOM, KUTTIKAD P.O. VIA CHALAKUDY, TRICHUR DISTRICT.

BY ADV. SRI.SHEEJO CHACKO
SRI.M.N.MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.12653/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT DT. 7.7.87 IN OS. 184/79 OF THE SUB COURT , IRINJALAKUDA.

EXT.P2:- COPY OF THE INJUNCTION ORDER IN IA. NO.1542/06 DT.3.11.06.

EXT.P3:- COPY OF THE REPORT OF THE ADVOCATE COMMISSIONER DT. 6.12.06.

EXT.P4:- COPY OF THE IA . NO.49/07 DT. 2.1.07.

EXT.P5:- COPY OF THE ORDER IN IA. 49/07 DT. 9.1.07.

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE OBJECTION FILED TO THE COMMISSIONER'S REPORT BY THE PLAINTIFF DT. 6.1.07.

EXT.R1(b):- COPY OF THE OBJECTION FILED TO IA. 49/07 IN OS. 184/79 ON THE FILES OF SUB COURT AT IRINJALAKUDA BY THE 1ST RESPONDENT DT. 6.1.07.

/TRUE COPY/

P.S. TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) No.12653 OF 2007

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Dated this the 23rd day of July, 2007

JUDGMENT

This writ petition is filed challenging the order passed by the learned Principal Sub Judge, Irinjalakkuda in I.A.No.49 of 2007 in O.S.No.184 of 1979. Now the prayer in the writ petition is to permit the petitioner to complete the work which he had already started and that he will not claim any equity or reservation for the value of improvements whatsoever and therefore the order under challenge may be set aside and the petition may be allowed. In the decision reported in ***Kassinkunju v. Velayudhan Pillai (1972 KLT 861),*** this court held that the law declines to compel a co-sharer to pay for improvements made on the common property by another co-sharer without the former's authorisation. However, as a matter of equity the court will make every effort to effect the division in such a way by alloting to the co-sharer who made the improvements the portion of the property where the improvements stand so long as this can be done consistently with the proportion of the property to which he is entitled and without causing prejudice to the other co-sharers. Learned counsel for the

writ petitioner submits before me that he had started work and only the finishing stages are to be completed and if it is not completed, it will destroy the property and it will also make him shelterless and an opportunity should be given to him to complete the construction which he had started and to construct a kitchen which is absolutely essential for living in the house.

2. I am not very clear about the previous order passed by the court below and I am told that there is an application for violation of the injunction committed by the petitioner. It is true that no court will permit him to complete the construction in violation of the order of injunction. So that also is a matter which has to be looked into.

Therefore, I set aside the order in I.A.No.49 of 2007 and direct the Principal Sub Court, Irinjalakkuda to bestow its best attention to pass fresh orders on these points and decide whether permission can be granted or not. Both sides shall be heard in detail and if necessary permission be granted to adduce evidence. Parties are directed to appear before the court below on 13.8.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-